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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,408	11/25/2003	Hue Scott Snowden	19076B	2660
23556	7590	07/11/2006	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956			PIZIALI, ANDREW T	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 07/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/723,408	Applicant(s) SNOWDEN ET AL.	
	Examiner Andrew T. Piziali	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-25, 28-31, 33-37, 39 and 40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23-25, 28-31, 33-37, 39 and 40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/9/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The amendment filed on 5/22/2006 has been entered. The examiner has withdrawn the rejections of claims 32 and 38 based on the cancellation of claims 32 and 38.

Claim Objections

2. Claim 24 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim, or amend the claim to place the claim in proper dependent form, or rewrite the claim in independent form. Claim 23 already establishes that the nonwoven fabric is a laminate.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claim 37 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 23 already establishes that the nonwoven fabric comprises at least one spunbonded layer and at least one meltblown layer, therefore, it is not clear how the laminate can comprise a laminate not including a meltblown layer.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 23-25, 28-31 and 33-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,145,727 to Potts et al. (hereinafter referred to as Potts) in view of USPN 5,023,130 to Simpson et al. (hereinafter referred to as Simpson).

Regarding claims 23-25, 28-31 and 33-37, Potts discloses a topically treated nonwoven fabric laminate comprising a first surface and a second opposing surface wherein the first surface comprises a repellant agent (see entire document including column 17, line 62 through column 18, line 5). Potts discloses that the repellant agent may be present in an amount of about 0.05 to about 15 weight percent (column 6, lines 18-33). Potts also discloses that the nonwoven fabric may be a spunbond/meltblown/spunbond fabric laminate (column 17, line 62 through column 18, line 5).

Potts discloses that the repellant may be any of a variety of fluoropolymers (column 13, lines 27 through column 14, line 37), but Potts does not specifically disclose whether any of the fluoropolymers are non-ionic. Simpson discloses that ZEPEL 7040 is a non-ionic fluoropolymer repellant additive that is known in the repellant nonwoven fabric art (see entire document including column 10, lines 55-64). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the repellant additive from any suitable repellant material, such as a non-ionic fluoropolymer, such as ZEPEL 7040, as taught by

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Simpson, because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability and desired characteristics.

Regarding claim 25, Potts discloses that the nonwoven fabric may be a medical fabric (column 17, lines 47-61).

Regarding claims 28-31 and 34-36, Potts does not disclose the specific hydrostatic head value or alcohol repellency of the treated nonwoven fabric, but considering that the fabric taught by the applied prior art is identical to the claimed treated nonwoven fabric (spunbond/meltblown/spunbond laminate coated on one surface with an antistatic agent and the other surface with a non-ionic fluoropolymer repellant), it appears that the fabric inherently possesses the claimed properties.

The Patent and Trademark Office can require applicants to prove that prior art products do not necessarily or inherently possess characteristics of claimed products where claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes; burden of proof is on applicants where rejection based on inherency under 35 U.S.C. § 102 or on prima facie obviousness under 35 U.S.C. § 103, jointly or alternatively, and Patent and Trademark Office's inability to manufacture products or to obtain and compare prior art products evidences fairness of this rejection, *In re Best, Bolton, and Shaw*, 195 USPQ 431 (CCPA 1977).

Regarding claim 33, Potts discloses that an antistatic agent may not be present (column 10, lines 33-47) (reads on the claimed less than 0.05 weight percent).

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7. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,145,727 to Potts in view of USPN 5,023,130 to Simpson as applied to claims 23-25, 28-31 and 33-37 above, and further in view of any one of USPN 4,000,233 to Gilbert or USPN 4,169,062 to Weipert.

Potts discloses that an antistatic agent may not be present (column 10, lines 33-47) (clearly reads on the claimed less than 0.05 weight percent), but Potts also discloses that the antistatic agent may be present in an amount of about 0.05 to about 15 weight percent (column 6, lines 18-33). About 0.05 weight percent is considered to read on the claimed less than 0.05 weight percent. Potts does not specifically mention an organic phosphate ester antistatic agent, but Gilbert and Weipert each disclose that it is known in the antistatic art to use an organic phosphate ester antistatic agent (see entire documents including column 1, lines 12-38 of Gilbert and Table II of Weipert). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the antistatic agent from any suitable antistatic composition, such as an organic phosphate ester, as taught by Gilbert and Weipert, because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability and desired characteristics.

8. Claims 39 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,145,727 to Potts in view of USPN 5,023,130 to Simpson as applied to claims 23-25, 28-31 and 33-37 above, and further in view of (to show inherency) USPN 5,296,282 to Evers.

Simpson discloses that ZEPEL 7040 is a known non-ionic fluoropolymer repellant, but

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Simpson does not appear to disclose the specific composition of ZEPEL 7040. Evers discloses that ZEPEL 7040 is a well-known perfluoroalkylethylacrylate repellent material (see entire document including column 3, lines 50-68).

Response to Arguments

9. Applicant's arguments filed 5/22/2006 have been fully considered but they are not persuasive.

The applicant asserts that one skilled in the art would not be motivated to use the repellent agent of Simpson as the repellent agent of Potts, because the repellent agent of Potts is melt extruded with the thermoplastic fiber material while the repellent agent of Simpson is applied on the fibers. The examiner respectfully disagrees. The appellant appears to be alleging that the repellent agent of Simpson is incapable of being melt extruded with thermoplastic fiber material, but applicant's argument is without merit because the applicant has failed to provide any evidence teaching or suggesting that the repellent agent of Simpson is incapable of being melt extruded with thermoplastic fiber material. It is noted that in the teachings of both Potts and Simpson, the repellent agent eventually ends up on the surface of the fibers because it migrates to the surface of the fibers in Potts and it is applied directly to the surface of the fibers in Simpson.

The applicant asserts that Potts does not teach or suggest a "topically treated" nonwoven fabric. The examiner respectfully disagrees. "Topically" means "Of or belonging to a particular location or place." Potts discloses that the repellent agent can be located in a particular location within the nonwoven fabric, specifically, the first surface.

Conclusion

10. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew T. Piziali whose telephone number is (571) 272-1541. The examiner can normally be reached on Monday-Friday (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

atp

g-j 7/6/06

ANDREW T. PIZIALI
PATENT EXAMINER